

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

COURTNEY MONTGOMERY,

Defendant-Appellant.

UNPUBLISHED

May 22, 2007

No. 269201

Wayne Circuit Court

LC No. 05-010376-01

Before: Cooper, P.J., and Murphy and Neff, JJ.

PER CURIAM.

Defendant appeals as of right his bench trial convictions of first-degree home invasion, MCL 750.110a(2), and domestic violence, MCL 750.81(2). Defendant was sentenced to 51 months to 20 years for the first-degree home invasion conviction, and 60 days for the domestic violence conviction, with the sentences to run concurrently. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Defendant's first argument on appeal is that there was insufficient evidence to convict him of first-degree home invasion, and that, instead, he should have been convicted of third-degree home invasion or entry without owner's permission. We disagree.

When reviewing a claim of insufficient evidence, this court reviews the record de novo. *People v Mayhew*, 236 Mich App 112, 124; 600 NW2d 370 (1999). When determining whether the prosecution has presented sufficient evidence to sustain a conviction, this Court must view the evidence in a light most favorable to the prosecution and determine whether any rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999).

The elements of first-degree home invasion are: (1) the defendant broke and entered a dwelling or entered the dwelling without permission; (2) when the defendant did so, he intended to commit a felony, larceny, or assault, or he actually committed a felony, larceny, or assault while entering, being present in, or exiting the dwelling; and (3) the defendant was armed with a dangerous weapon, or another person was lawfully present in the dwelling. *People v Sands*, 261 Mich App 158, 162; 680 NW2d 500 (2004); MCL 750.110a(2).

Defendant only contests the sufficiency of the evidence with regard to the second element of first-degree home invasion. He argues that there was insufficient evidence to convict him of first-degree home invasion because he did not enter the victim's home with the intent to commit a larceny or other crime. It is clear from the plain language of the statute, however, that defendant's conduct constituted first-degree home invasion. The prosecution satisfied its burden of establishing the second element of the crime by establishing beyond a reasonable doubt that defendant actually committed an assault while he was present in the dwelling. The victim testified that while defendant was in her home, he hit her with his fist twice, grabbed her and pushed her without her permission. Defendant even testified that he pushed the victim while they were arguing, and he does not contest his domestic assault conviction on appeal.

Defendant's second argument on appeal is that the trial court abused its discretion in scoring ten points for offense variable ten ("OV 10"). We disagree. This Court reviews a trial court's scoring decision for an abuse of discretion. *People v Cox*, 268 Mich App 440, 453-454; 709 NW2d 152 (2005). A sentencing court has discretion in determining the number of points to be scored, provided that evidence of record adequately supports a particular score. *People v Endres*, 269 Mich App 414, 417; 711 NW2d 398 (2006). Scoring decisions for which there is any support will be upheld. *Id.*

OV 10 is "exploitation of a vulnerable victim." MCL 777.40(1). The statute indicates a score of ten where "the offender exploited a victim's physical disability, mental disability, youth or agedness, or a domestic relationship, or the offender abused his or her authority status." MCL 777.40(1)(b). "'Exploit' means to manipulate a victim for selfish or unethical purposes." MCL 777.40(3)(b). "'Vulnerability' means the readily apparent susceptibility of a victim to injury, physical restraint, persuasion, or temptation." MCL 777.40(3)(c). The trial court assessed defendant a score of ten for this offense variable based on its conclusion that defendant exploited a domestic relationship with the victim.

The record supports the court's determination that a domestic relationship existed between defendant and the victim. Noting that the statute does not define "domestic relationship," defendant argues that no such relationship existed between himself and the victim at the time of the incident because they were no longer living together or dating, defendant did not have a key to the victim's house, and he needed her permission to enter. However, the court's finding that a domestic relationship existed because defendant and the victim have a child together is consistent with the use of the word "domestic" elsewhere in Michigan's criminal code, as well as with the ordinary dictionary definition. A relationship is "domestic" for purposes of the domestic assault statute where the victim is the defendant's "spouse or former spouse, an individual with whom he or she has or has had a dating relationship, *an individual with whom he or she has had a child in common*, or a resident or former resident of his or her household." MCL 750.81(2) (emphasis added). In addition, Random House Webster's College Dictionary defines "domestic," in part, as follows: "1. of or pertaining to the home, family, or household affairs." See *People v Denio*, 454 Mich 691, 699; 564 NW2d 13 (1997) (noting that, where a statute does not expressly define a term, a court may consult dictionary definitions). Defendant and the victim clearly have a familial relationship because they have a child together. In addition, the victim testified that, at the time of the incident, defendant occasionally spent nights at her house and that she never had a problem with him coming over to see the baby.

The record also supports the court's determination that defendant exploited his domestic relationship with a vulnerable victim. By grouping "domestic relationship" with other categories of obvious vulnerability ("physical disability, mental disability, youth, or agedness"), the statute recognizes that domestic relationships themselves may create vulnerabilities. The record supports the conclusion that defendant acted in a selfish and manipulative manner in the context of his relationship with the victim as the baby's father. After they had argued over the phone and the victim had told him not to come over, defendant came to her house angry and intoxicated in the early hours of the morning. He pounded on her door and then came into the house through her bedroom window, even as she continued to tell him not to. He then grabbed the baby away from the victim and held the baby as he pushed the victim and struck her with his fist.

The record in this case supports the trial court's conclusion that a domestic relationship existed between defendant and the victim and that defendant exploited that relationship through his threatening and abusive conduct. Accordingly, the court's scoring of OV 10 at ten points was not an abuse of discretion.

Affirmed.

/s/ Jessica R. Cooper
/s/ William B. Murphy
/s/ Janet T. Neff